

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KATHY HAINEY, et al.	:	Case No. 1:02CV 00733
Plaintiffs	:	[Hon. Sandra S. Beckwith] [Hon. Timothy S. Black, M.J.]
-vs-	:	
CARL L. PARROTT, et al.	:	
Defendants	:	

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING
WITH CLAIM FORM AND REQUEST FOR EXCLUSION ("OPT OUT") FORM**

Please Read This Notice Carefully And In Its Entirety. A Settlement Has Been Proposed In Pending Class Action Litigation That May Affect Your Rights. If You Are A Member Of The Class Described Below, You May Be Entitled To A Share In The Proceeds Of The Settlement Described In This Notice.

I. PURPOSE OF NOTICE

This Notice is to advise you of a proposed settlement of this pending lawsuit and of your possible rights as a member of the class (defined below as "the Class") covered by the proposed settlement including, among other things, 1) if you are eligible to receive benefits in the settlement if approved by the Court, 2) or to object to the proposed settlement.

This Notice is to inform you of a hearing to be held by the Court on Monday, September 10, 2007 at 9:00 a.m. in Room 822 before Judge Sandra S. Beckwith at the Federal Courthouse at Fifth & Main Streets, Cincinnati, Ohio 45202 to determine whether the proposed settlement should be approved by the Court as fair, reasonable, and adequate, and to consider such other matters as may properly come before the Court. The Court has preliminarily approved the settlement as within the range of a fair, reasonable and adequate settlement, and has scheduled the hearing to determine whether to grant the Court's final approval to the settlement.

II. WHAT THE LAWSUIT IS ABOUT

In 2002, Attorney John H. Metz filed the present case (*Hainey v. Parrott, M.D.*) after learning that certain body parts (most frequently, brains and hearts) were in some cases retained by the Hamilton County Coroner's Office as part of the autopsy process after the body was released. This was done without notice to the next-of-kin, and without any opportunity for the return of those body parts for burial.

The defendants deny all legal liability or any wrongdoing. Defendant coroner has claimed such policy and procedure was necessary to his statutory function to determine the cause of death. For example, he contends in certain cases organs, such as brains, hearts, and spines, needed to be removed and retained for further examination to complete the autopsy process. Sometimes, this process takes 10-14 days after the body has been released by the coroner's office to be completed.

Plaintiffs are not contesting retention of organs for this examination. However, they are contesting the failure to have notice of this retention, and the ability to retrieve the retained body parts for burial or other disposition once the autopsy process was completed.

Judge Beckwith issued a legal decision on September 28, 2005, which found that the Hamilton County Coroner's policy and procedure of removing and retaining these organs during autopsy, without providing notice and an opportunity to secure the return of the removed body parts, was not legal.

While an appeal was pending on the judge's decision, the parties entered into mediation to explore possible settlement. As a result of the mediation, the defendants have agreed to pay a total of Six Million Dollars (\$6,000,000.00) into a settlement fund for resolution and have done so pending final Court approval of settlement.

The judge's decision to approve or not approve the proposed settlement will take place following a Settlement Fairness Hearing at which members of the Class will be permitted to voice their opinions as to settlement as proposed.

This settlement, if approved, will avoid the uncertainty of a trial and possible inconsistent verdicts to the Class members. The settlement will avoid the substantial expense both in time and money of prosecuting further appeals of Judge Beckwith's decision.

The settlement would be for the benefit of the following Class by priority of those decedents autopsied between January 19, 1991 and October 31, 2002 whose organs were retained without notice:

- 1) the spouse;
- 2) an adult son or daughter;
- 3) either parent;
- 4) an adult brother or sister;
- 5) other relatives of the deceased;
- 6) friends, and/or any other person who undertakes to inter or cremate the body of the decedent at private expense.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Background Of The Settlement

Based on their review and analysis of the relevant facts and legal principles, and in

light of the risks, uncertainties, difficulties, and delay of continued litigation, plaintiffs' class counsel and defense counsel have concluded that this litigation should be settled as proposed, and believe that the terms and conditions of the settlement are fair, reasonable, adequate, beneficial, and in the best interests of the Class. In evaluating the settlement, the Court will consider the defenses asserted by defendants, the uncertainty of the outcome, the substantial benefits that the Class will receive pursuant to the settlement, and that a settlement at this time will avoid future litigation in the trial court and eliminate lengthy appeals.

The provisions of the proposed settlement provide the plaintiffs and future citizens with something unique that could not be obtained with going forward with a jury trial. If the case would go to jury trial, the outcome at best could only be a verdict in some monetary amount. However, under the terms of the proposed settlement, the defendant County Coroner's office has agreed to be bound by a Court order that assures future persons whose loved ones are autopsied in Hamilton County will receive Notice of the removal of organs, and will have the opportunity to secure their return for burial or cremation, or allow the Coroner to respectfully dispose of said organs. In fact, the defendants have already instituted such Notice.

The principal terms of the settlement are summarized as follows.

B. Class Recovery

Defendants have placed Six Million Dollars (\$6,000,000) (the "Settlement Fund") in escrow which, if the settlement is approved, will be used to compensate the class members, after deduction of attorney's fees, expenses, administrative costs and incentive compensation to the Class Representatives and any other expenses approved by the Court.

Amounts remaining in the fund following payment of attorney's fees and expenses, administrative expenses, and incentive awards to named plaintiffs will be divided by the number of decedents who have eligible claimants. For eligibility to be determined, a claim form must be timely submitted.

C. Attorney's Fees, Expenses And Incentive Payments To Class Representatives

Class counsel has been aggressively prosecuting this case for nearly 6 years on behalf of the Class without charge to the Class on a contingency fee basis. Class counsel intends to apply for an award of attorney's fees not to exceed 33-1/3% and reimbursement of expenses. In addition, Class Counsel will move the Court to approve an award of \$50,000 for each of the five Class Representatives who have been actively involved in litigation in this matter to date, including, but not limited to, subjecting themselves to depositions, written questions, requests for documents, costs of litigation, and other mediation measures.

D. How To Participate In The Settlement

All Class members who wish to be considered for a monetary award will be required to complete a claim form, which is included with this Notice.

All members of the Class who are eligible as defined in the settlement agreement, and who submit claim forms may be entitled to distribution from the Settlement Fund if the proposed settlement is approved by the Court. As a member of the Class you will be bound by the final judgment and release of claims against the defendants.

As a member of the Class, you are automatically represented by Class counsel. All fees and expenses of Class counsel approved by the Court will be paid out of the Settlement Fund, as described above. **You will not have to pay Class counsel any additional amounts, and in no event will you be obligated to pay any judgment, court costs, or attorney's fees for participating in this class action and settlement.**

Though you are automatically a Class member, you will only be eligible for consideration for a monetary award if you timely submit the appropriate enclosed Claim Form.

If you do NOT wish to remain a Class member and be bound by this settlement, you must complete and timely submit the enclosed Request for Exclusion ("Opt out") Form.

E. Releases

If the Court approves the proposed settlement and you are a Class member, unless you have previously delivered a timely request to be excluded ("opt-out") from the Class, you will release (give up) all claims against defendants (Carl Parrott, M.D., Hamilton County, Ohio and Hamilton County Coroner), their successors, predecessors, subsidiaries, affiliates, and agents that have been or could have been asserted in this lawsuit, and all claims known or unknown arising from the allegations in this lawsuit, as described in the settlement agreement filed with the Court. If the Court approves the proposed settlement, this lawsuit will be dismissed in its entirety, with prejudice, which dismissal will be incorporated into a final judgment approving the settlement. **All Class members who have not already excluded themselves will be bound by the final judgment entered by the Court.**

IV. OBJECTIONS TO THE PROPOSED SETTLEMENT

You have a right as a Class member to object to the proposed settlement.

You may appear, in person or through your counsel, at your own expense, and be heard in opposition to the fairness, adequacy or reasonableness of the settlement, or the payment

of attorney's fees and reimbursement of expenses. You must be a member of the Class in order to object to any aspect of the proposed settlement. If you excluded yourself from the Class, the Court will not consider your objection(s).

Any objection(s) must be in writing from a member of the Class who has filed a claim form demonstrating eligibility for Class participation, and must set forth: 1) the name of the case; 2) the name of the decedent; 3) the Class member's name; 4) a statement as to whether the Class member intends to appear in person at the Settlement Fairness Hearing; 5) a statement of the specific basis for the objection, including identification of all papers the Class member intends to rely on at the hearing; 6) the names of all witnesses, if any, the Class member intends to call at the Settlement Fairness Hearing; 7) the Class member's current address and telephone number, and 8) the Class member's signature or that of his or her authorized representative. Although you may file a written objection(s), by doing so you do not need to appear at the Settlement Fairness Hearing, and your objection(s) will still be considered by the Court.

You may not object to this settlement in open court unless the written objection(s), which meets the above requirements, is filed with the Clerk of the Court, Room 103, U.S. District Court, Southern District of Ohio - Western Division, Potter Stewart U.S. Courthouse, Fifth & Main Streets Cincinnati, Ohio 45202 **on or before August 6, 2007.**

The Court will not consider any objection(s) received after August 6, 2007. Late objections will be deemed to have been waived. Any judgment entered in this lawsuit will include and be binding on all Class members who have not timely requested exclusion from the Class, even if they object to the proposed settlement. If you object to the proposed settlement, you may still receive benefits if the Court approves the Proposed Settlement and you are otherwise eligible for a distribution and have not opted-out.

V. SETTLEMENT FAIRNESS HEARING

The Court has scheduled a Settlement Fairness Hearing on September 10, 2007, at 9:00 a.m. in Room 822, U.S. District Court, Southern District of Ohio - Western Division, Potter Stewart U.S. Courthouse, Fifth & Main Street Streets, Cincinnati, Ohio 45202, before the Honorable Sandra S. Beckwith.

At the Settlement Fairness Hearing, the Court will consider, among other things, whether the settlement is fair, reasonable, adequate, and is in the best interests of the Class. **Although you may attend this hearing, you are not required to do so in order to participate in the settlement.** The Settlement Fairness Hearing may be continued or adjourned by the Court, without further notice to Class members.

VI. APPEARANCE AT SETTLEMENT FAIRNESS HEARING

All persons who intend to speak at the Settlement Fairness Hearing, either for or against, must file a Notice of Intention to Appear with the Clerk of Court and serve that notice on Class Counsel and Defense Counsel at the addresses listed below. The Court and the

parties' counsel must receive your Notice of Intention to Appear no later than August 6, 2007. **You do not need to file a Notice if you wish to attend the Settlement Fairness Hearing merely to observe, but you will not be able to participate.**

VII. SCOPE OF THIS NOTICE AND ADDITIONAL INFORMATION

This Notice is only a summary of the litigation and the proposed settlement, which is set forth in detail in a Settlement Agreement on file with the Clerk of Court. For more details about the litigation and the proposed settlement, you may consult the Settlement Agreement and the pleadings, records and other papers on file in this litigation, which may be inspected during regular business hours in the Office of the Clerk of Court, Room 103, U.S. District Court, Southern District of Ohio - Western Division, Potter Stewart U.S. Courthouse, Fifth & Main Street Streets, Cincinnati, Ohio 45202, or may be viewed on the Court's website at www.ohsd.uscourts.gov. You may also view settlement documents online on Hamilton County's website at www.hamiltoncountyohio.gov/hc/hc_pdfs/HAINEY_CLASS_ACTION_SETTLEMENT.pdf.

All responses/questions must be directed to the Special Master.

June 1, 2007

The Honorable Sandra S. Beckwith
Chief Judge, United States District Court

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